

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

IN RE:

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PRESENTENCE REPORTS

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MISC. NO. 00-308

STANDING ORDER 2015-02

The PROTECT Act of 2003, 28 U.S.C. § 994(w)(1), requires the Chief Judge of each district court to ensure that certain sentencing information is promptly forwarded to the Sentencing Commission after the entry of judgment in specified criminal cases, including the presentence report. Local Rule 213.1(a) (D. Md. 2014), directs that presentence reports are confidential court records to which the public has no right of access. The Local Rule also prohibits the Probation Office from disclosing the presentence report and other documents except as authorized by law or ordered by the Court. Presentence reports, primarily in Part C, include sensitive background facts concerning the defendant and the defendant's family, including parents, siblings, spouse and children (with names and addresses), as well as medical and work histories. The parties, justifiably, often request the court to order the Commission to keep for its "eyes only" personal information contained in presentence reports. The release of personal information is potentially embarrassing or even dangerous (*e.g.*, addresses of family members) to the defendant and the defendant's family.

In the great majority of cases the personal history in Part C does not factor into the judge's calculation of the guideline range. Rarely is such information germane to a determination of the defendant's offense level or criminal history category, or whether to depart from the guidelines. Part C information becomes relevant primarily when the judge is deciding

(i) what sentence to impose within the guideline range, (ii) whether to sentence outside the guideline range, and (iii) what special conditions of post-incarceration supervision (*e.g.*, drug testing) to impose.

Deciding confidentiality motions on a case-by-case basis at sentencing imposes an administrative burden on our increasingly understaffed Clerk's Office and Probation Office. The motions and the resulting rulings must be written, docketed, and complied with individually. This burden will be reduced if all presentence reports are treated uniformly by automatically restricting dissemination of Part C. This restriction will not frustrate the goal of gathering information stated in the PROTECT Act. Congress's expressed concern involves the determination (by departure or otherwise) of guideline ranges, and not the determination where within the range defendants are placed, whether to vary from the guidelines, or the conditions of post-incarceration supervision. Moreover, the restrictions on access to personal information can be lifted on motion for good cause shown.

Furthermore, when juvenile court and police records from the State of Maryland are included in the presentence report as part of the criminal history information, those portions of the report likewise should not be further disseminated without specific court authorization because of the provisions of Md. Code Ann., Cts. and Jud. Proc. Art. § 3-BA-27.

Accordingly, it is hereby

ORDERED that Administrative Order 2004-2 is rescinded; and it is further

ORDERED that:

- (i) unless otherwise ordered in a particular case, the Sentencing Commission is prohibited from releasing the personal information contained in Part C of a

presentence report and any reference to Maryland juvenile or police records to any other person or agency;

- (ii) any interested person may move, for good cause shown, to lift or modify this restriction in a particular case; and
- (iii) the Probation Office shall attach a notice to each presentence report it transmits to the Sentencing Commission referring to this standing order and shall provide a copy of this order upon request.

Feb. 4, 2015
Date



Catherine C. Blake, Chief Judge
United States District Court